

MEMORANDUM

TO: ALL BROKER-DEALERS REGISTERED OR APPLYING TO BE
REGISTERED IN THE STATE OF ARKANSAS

FROM: ARKANSAS SECURITIES DEPARTMENT

RE: INDEPENDENT CONTRACTORS

DATE: JULY 1, 1987

It has come to the attention of this Department that certain broker-dealers are attempting to classify their salespersons as "independent contractors". The Department is concerned that such salespersons have failed to properly register as broker-dealers and that the broker-dealers with which these salespersons are associated may believe that they do not have the supervisory duties and liabilities normally applicable. In an effort to forestall regulatory proceedings concerning this subject, the Department is hereby making known its position concerning "independent contractors".

The Arkansas Securities Act, Ark. Code Ann. § 23-42-301 et seq. (the "Act"), provides that it is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is registered under the Act. "Broker-dealer" is defined in § 23-42-102(3) as any person engaged in the business of effecting transactions in securities for the account of others or for his own account. Certain exceptions are then set forth, none of which include "independent contractors". "Agent" is defined in § 23-42-102(2) as any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. This definition is followed by certain exceptions which do not include "independent

Under those sections cited above, any person who sells or offers securities or effects securities transactions for someone other than himself must be registered as a broker-dealer or an agent. These two classifications encompass all persons who may legally purchase or sell securities for other persons. Nowhere in the Act is there a definition of the term "independent contractor" or an exception provided for such. Therefore, any person who sells or purchases securities for another person unless he is a broker-dealer or comes within one of the other exceptions set for in § 23-42-102(2), must be registered as an agent. Since by definition, an agent represents a

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broker-dealer in effecting securities transactions, any attempt to classify an agent as an "independent contractor" is without effect under the Act unless the "independent contractor" is registered as a broker-dealer. By sponsoring an agent and signing the agent's Form U-4, a broker-dealer agrees to be responsible for any acts of the agent in connection with the offer, purchase or sale of securities, which may include acts which the broker-dealer considers to be outside the scope of the agent's employment. Therefore, the position of the Arkansas Securities Department is as follows:

THE RELATIONSHIP OF "INDEPENDENT CONTRACTOR" BETWEEN A BROKER-DEALER AND AN AGENT IS NOT RECOGNIZED UNDER ARKANSAS SECURITIES ACT. ANY PERSON SPONSORED BY A BROKER AS AN AGENT IS A REPRESENTATIVE OF THE BROKER-DEALER IN THE OFFER, SALE OR PURCHASE OF SECURITIES FOR CIVIL AND REGULATORY PURPOSES, REGARDLESS OF ANY AGREEMENT BETWEEN THE BROKER-DEALER AND THE AGENT PURPORTING TO LIMIT THE LIABILITY OF THE BROKER-DEALER AND CLASSIFY THE AGENT AS AN "INDEPENDENT CONTRACTOR". UNLESS AN AGENT IS SEPARATELY REGISTERED AS A BROKER-DEALER, HE WILL BE CONSIDERED TO BE AN EMPLOYEE OF AND ACTING ON BEHALF OF THE BROKER-DEALER WITH WHICH HE IS REGISTERED IN THE OFFER, SALE OR PURCHASE OF SECURITIES.

If the broker is unwilling to assume the supervisory duties and accompanying liabilities inherent in the relationship of broker-dealer and agent as set forth above, it is necessary that the broker-dealer terminate the agent's association with the broker-dealer and that each agent that is designated as an "independent contractor" become registered as a broker dealer.

Please feel free to contact this Department if you have any questions.